



2010-0000181

RECORDING REQUESTED BY:

Pacific Gas and Electric Company
3401 Crow Canyon Rd
San Ramon, California 94583

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Attention: Duane White
8800 Cal Center Drive
Sacramento, California 95826

Recorded	REC FEE	0.00
Official Records		
County of	COPIES	3.00
Butte	CONFORMED COPY	1.00
CANDACE J. GRUBBS		
County Clerk-Recorder		
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01:27PM 01-Jan-2010	Page 1 of 17	

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Re: Pacific Gas and Electric Company Former Manufactured Gas Plant,
Chico, Butte County
(Butte County Assessor's Parcel Number 004-038-004)
California Department of Toxic Substances Control Site #100301

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This Covenant and Agreement ("Covenant") is made by and between Pacific Gas and Electric Company (the "Covenantor"), the current owner of property situated in Chico, County of Butte, State of California, described in Exhibit "A" and depicted in Exhibit "B," attached, (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25355.5 that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 0.42 acres is more particularly described and depicted in the attached Exhibits "A" and "B". The Property is located in the area now generally bounded by West Second Street on the north, Orange Street on the west, Cherry Street on the east, and West 3rd Street on the south. The Property is also generally described as Butte County Assessor's Parcel Number 004-038-004.

1.02. The property subject to this covenant is Butte County Assessor's Parcel Number 004-038-004.

1.03. The Property was included within a former town gas plant which produced gas from coal and oil from 1874 to 1928. The gas manufacturing and purification processes yielded a variety of gas plant residues including tars, lampblack, light oils, and other petroleum products. A Final Removal Action Workplan (RAW) and Notice of Exemption pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq., were approved by the Department in July 2006 for the site as defined in the RAW. The purpose of the RAW was to present the actions selected to remedy soil and groundwater impacts at the Site as well as the rationale for selecting the actions. The selected soil remedy included excavating and transporting approximately 1,348 tons of impacted soil to a permitted facility, which was completed in October 2007, and execution and recording of a land use covenant specifying restrictions on future land and groundwater use. The selected groundwater remedy included natural attenuation, which requires ongoing groundwater monitoring from several site monitoring wells. As depicted in Exhibit C, a total of 15 groundwater monitoring wells are associated with ongoing remediation activities at the Site, four of which currently exist on the Property. The ongoing groundwater monitoring network is shown in Exhibit C. The Covenantor is responsible for conducting groundwater monitoring under the oversight of the Department.

1.04. The chemicals of concern (COCs) found on the Property were poly aromatic hydrocarbons (PAHs), TPH as gasoline, diesel, and oil, benzene, toluene, ethylbenzene, and xylene. Before the soil remediation, PAHs ranged from 0 to 7.92 milligrams per kilogram of soil (mg/kg), based on the benzo(a)pyrene equivalent, TPH as diesel's maximum concentrations were 3000 mg/kg, and TPH as oil's maximum soil concentrations were 800 mg/kg in the soil. After soil removal was completed, total PAHs ranged from 0 to 0.18 mg/kg based on benzo(a)pyrene and 1 mg/kg for TPH as diesel. The soil remediation removed the source; however, additional soil contamination may be present underneath the office / warehouse building and transformer areas. The soil remediation goals listed in the Final RAW were 0.4 mg/kg as a benzo(a)pyrene equivalent for PAHs and 3,500 mg/kg for TPH as diesel. As stated in the Final RAW, the site specific soil remediation levels were protective of groundwater and human health for industrial/commercial land use, which is the Property's current zoning. This land use covenant prohibits residential-type land use on the Property.

1.05. Depth to groundwater at the Property varies seasonally, and has ranged from between approximately 12 feet to 15 feet below ground surface (bgs). A shallow aquifer consisting of gravel or sand fill from approximately 1 to 5 feet bgs, silty sand from approximately 5 to 20 feet bgs and varying layers of gravel, clayey gravel to a depth of approximately 30 feet bgs exists beneath the Property. Below the shallow aquifer, a 5 to 8 foot thick semi-permeable silty clay layer demarks the top of a semi-confined (middle) aquifer consisting 10 to 15 feet of silty sand underlain by a confining unit of silty clay and sand approximately 25 to 30 feet thick (approximately 90 feet bgs). The deep aquifer extends from 90 feet bgs to an unknown depth and consists of varying ratios of sand, silt, clay, and gravel. As reported in the 2008 groundwater report prepared by Parsons, contaminants in the groundwater in the shallow and middle zones

include TPH as gasoline at 300 micrograms per liter (ug/L), as diesel at 630 ug/L and as naphthalene at 57 ug/L. The California drinking water standard for TPH as gasoline is 5 ug/L, for TPH as diesel is 100 ug/L, and for naphthalene is 21 ug/L. Contamination in the groundwater beneath the Property is above the California drinking water standards. Currently the contaminated groundwater beneath the Property is not a drinking water source. Groundwater samples collected since 1991 from various wells show the groundwater plume concentrations are decreasing through natural attenuation. This land use covenant prohibits extraction of groundwater beneath the site without the Department's approval.

ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03. Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.04. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.06. Owner. "Owner" means the Covenantor, and all successors in interest including heirs and assigns, who at any time hold title to all or any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and

assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.04. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law or by administrative order.

3.05. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's costs in administering the Covenant.

ARTICLE IV RESTRICTIONS AND REQUIREMENTS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management.

- (a) No activities that will disturb the soil at or below grade (e.g., excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) under the office/warehouse building and transformer areas shall be allowed on the Property without a Soil Management Plan approved by the Department in advance.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in

accordance with all applicable provisions of state and federal law.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Drilling for any water, oil, or gas without prior written approval by the Department.
- (b) Extraction of groundwater except as approved by the Department.

4.04. Non-Interference with the Monitoring Well Network on the Property.

- (a) Activities that may disturb the groundwater monitoring wells (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Property without prior written approval by the Department.
- (b) For monitoring wells: all uses shall preserve the physical accessibility to and integrity of the groundwater monitoring system.

4.05. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.06. Access for Implementing Operation and Maintenance. PG&E is responsible for implementing the Operation and Maintenance Agreement attached as Exhibit D. PG&E shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Agreement until the Department determines that no further Operation and Maintenance is required.

4.07. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection of the Property verifying compliance with this Covenant, and shall submit an annual inspection report to the Department for its approval by January 15th of each year. The annual inspection report must include the dates, times, and names of those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual inspection report (e.g., drive by, fly over, walk in, etc.). If violations are noted, the annual inspection report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within ten days of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant, and demand that the violation cease immediately. Additionally, copies of any correspondence related to the violation of this Covenant shall be sent to the Department within 10 days of its original transmission.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Owner, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02. Termination or Partial Termination. Owner, or any other aggrieved person, may apply to the Department for a termination or partial termination of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03. Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Butte within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Sharron Reackhof
Pacific Gas and Electric
3401 Crow Canyon Rd, Mail Code 177D
San Ramon, California 94583

To Department: Fernando Amador
Attn: PG&E Chico Project Manager
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.


7.04. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.05. Statutory References. All statutory references include successor provisions.


7.06. Incorporation of Attachments. All attachments and exhibits to this Covenant are incorporated herein by reference.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Pacific Gas and Electric Company

By: 
Date: 10/27/2009
Name: DESMOND BELL
Title: SVP SHARED SERVICES & CPO

Department of Toxic Substances Control:

By: 
Date: 11/03/2009
Name: Duane White, P.E.
Title: Project Manager

ACKNOWLEDGMENT

State of California

County of San Francisco

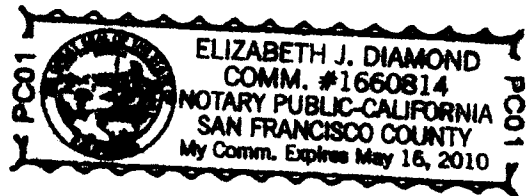
On October 27, 2009 before me, ELIZABETH J. DIAMOND, Notary Public
(insert name and title of the officer)

personally appeared Desmond BELL,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are
subscribed to the within instrument and acknowledged to me that ~~he~~ she ~~they~~ executed the same in
~~his~~ her ~~their~~ authorized capacity ~~(ies)~~, and that by ~~his~~ her ~~their~~ signature ~~(s)~~ on the instrument the
person ~~(s)~~, or the entity upon behalf of which the person ~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Elizabeth J. Diamond (Seal)



California All-Purpose Acknowledgment

State of California

County of

Sacramento

SS.

On November 9, 2007 before me,

Kathleen C. Duncan
Notary Public

personally appeared

David Arthur White
Public

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Kathleen C. Duncan
Signature of Notary Public

This area for official notarial seal

(Optional) My commission expires on: 12-9-2009

(Optional) Phone No.: 916-746-1961



EXHIBITS
PG&E CHICO

A – SITE LOCATION MAP

B – ASSESSOR'S PARCEL MAP

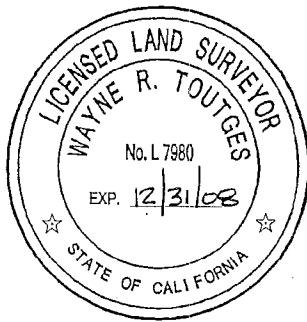
C – REMEDIATION SYSTEM MAP OR DIAGRAM

EXHIBIT A
LEGAL DESCRIPTION
PG&E

Exhibit "A"
Description of Real Property

That certain real property, situate in the City of Chico, County of Butte, State of California, being further described as follows:

Lot 1 and Lot 8 of Block 63, as shown upon the map titled "City (Formerly Town) of Chico", recorded in the Office of the Recorder of the County of Butte, State of California.



APPROVED AS TO DESCRIPTION

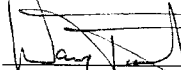

Wayne R. Toutges, PLS 7980
Expires 12/31/08

EXHIBIT B
ENGINEERING MAP
PG&E

①

T22N R1E MDM
Sec. 27

Chico, Butte Co. 225.

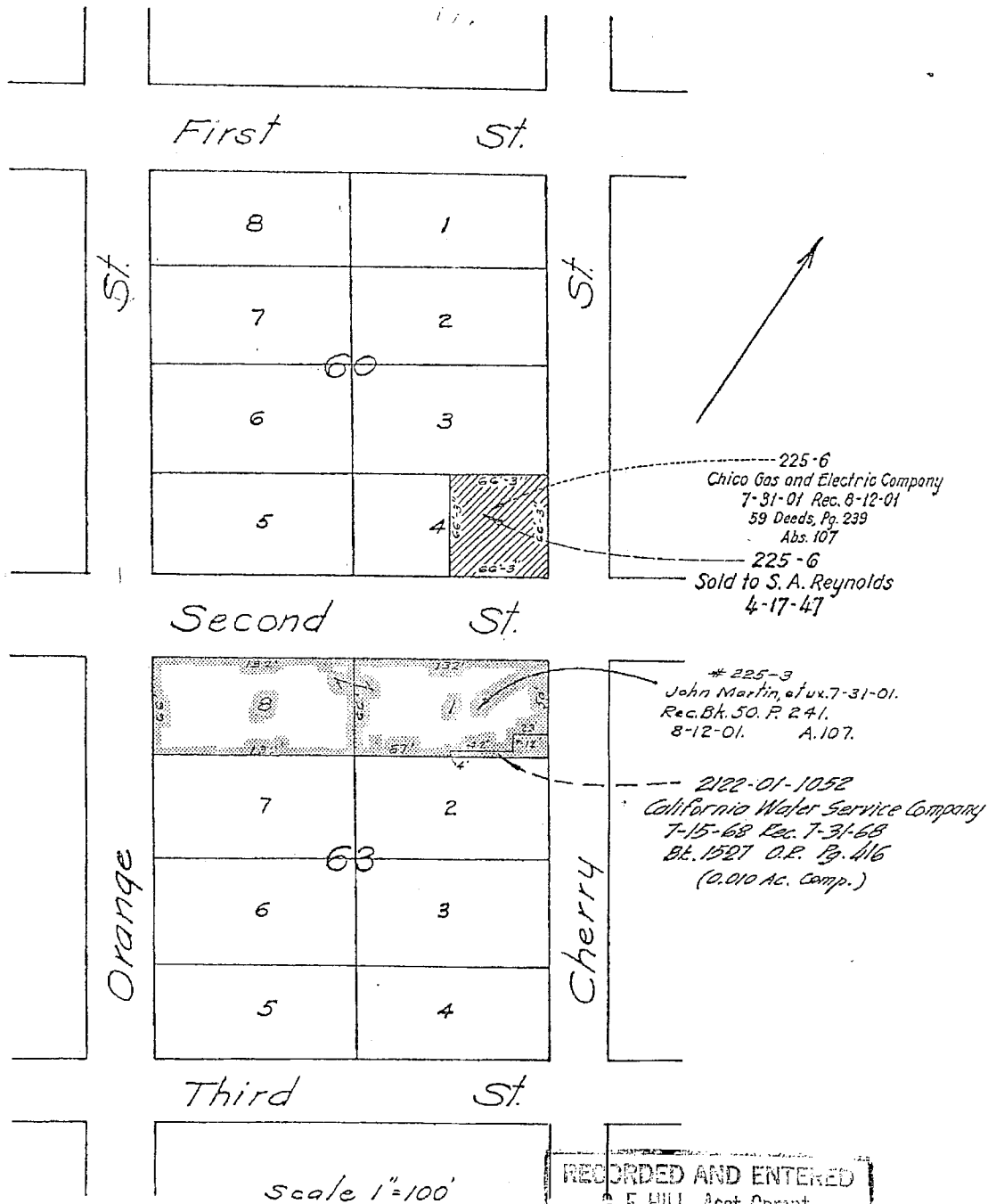
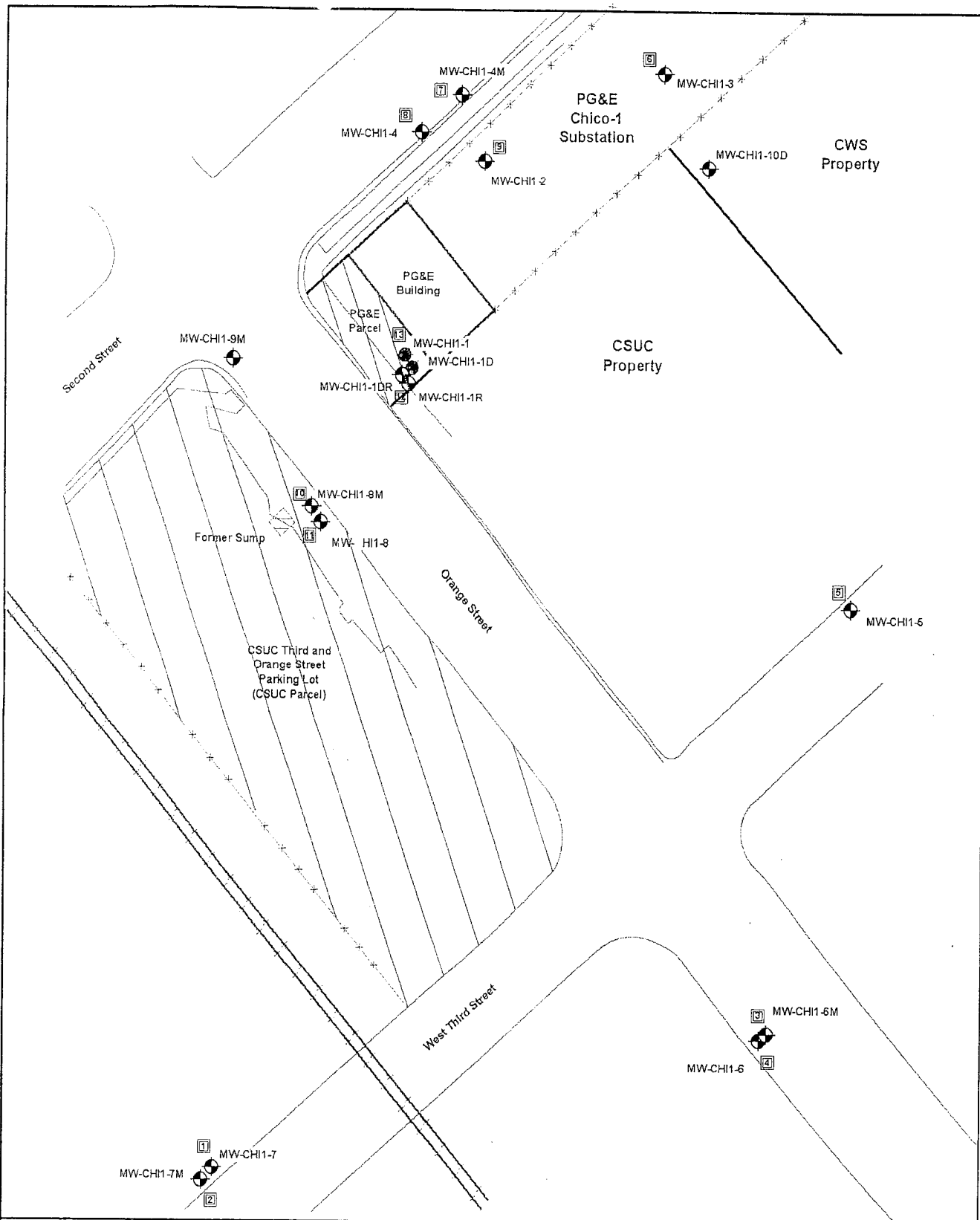


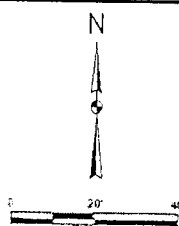
EXHIBIT C
MONITORING WELL NETWORK
PG&E



LEGEND

- Groundwater Monitoring Well
- Abandoned Monitoring Well
- Sampling/Gauging Order
- Railroad
- Fence

CSUC - California State University, Chico
CWS - California Water Service



Approximate Scale

Exhibit C

Groundwater Monitoring Well Location Map

Former Manufactured Gas Plant Site
Chico, CA



1150 Laurel Lane, Suite 190, San Luis Obispo, CA 93401
Telephone: 805-549-2300 Fax: 805-549-2350
Created By: G. Moran, July 8, 2008
Checked By: M. Silva, July 8, 2008

PROJECT : CHICO-1 FORMER MANUFACTURED GAS PLANT

Background

The Chico-1 Former Manufactured Gas Plant (MGP) site located at 825 West 2nd Street, Chico, California produced gas from coal and oil from 1874 to 1928. The gas manufacturing and purification processes yielded a variety of gas residues including tars, lampblack, light oils, and other petroleum products. Soil remediation to address the MGP impacts, including excavating and transporting 1,348 tons of impacted MGP impacted soils was completed in October 2007. The selected groundwater remedy requires ongoing groundwater monitoring from several monitoring wells.

Action Required

In February 2008, the California Department of Toxic Substances Control (DTSC) approved the completion of the remedial activities at the Chico-1 site. Remedial actions were conducted in accordance with the Enforceable Agreement Docket Number 93/94-006. As a requirement of the DTSC approved removal action, a land use covenant (LUC) to restrict property use must be recorded on the property and an Operation and Maintenance (O&M) Agreement must be signed between PG&E and DTSC. The LUC restricts the use of property where MGP impacts remain since there is presently an active substation. The final removal action will take place when the substation is decommissioned.

Outcome

The LUC will limit the site's land use to industrial/commercial use and require a soil management plan for disturbance of any areas where possible MGP impacts remain as a result of inaccessibility to remediate due to such reasons as infrastructure impediments.

The O&M Agreement will require PG&E to continue groundwater monitoring at the site until MGP impacts are either non-detect or below drinking water cleanup standards. The agreement also requires financial assurance to assure funds are available to implement O&M requirements.

Documents to be signed

(3 Original Copies of the LUC and 2 Original Copies of the OMA):

(1) COVENANT TO RESTRICT USE OF PROPERTY – ENVIRONMENTAL RESTRICTION Re: Pacific Gas and Electric Company Former Manufactured Gas Plant, Chico, Butte County (Butte County Assessors Parcel Number 004-038-004) California Department of Toxic Substances Control Site #100301

(2) OPERATION AND MAINTENANCE AGREEMENT - IN THE MATTER OF: Pacific Gas and Electric Company, 825 West 2nd Street, Chico, California 95828